IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 252 OF 2004

Mr. R. Charles Raj,
aged about 48 years,
Occ. Service as a Trained
Asstt. Teacher,
R/o. Rajesh Apartment,
'C' Wing, R.No.8,
Katemanivali Road,
Kalyan (E),
District Thane. ...Petitioner

Versus

The State of Maharashtra ...Respondent

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Shri. P.M. Pradhan with A.R. Pitale, Advocate for the petitioner.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 22ND NOVEMBER, 2004

ORAL JUDGMENT:-

1. The petitioner has preferred this writ petition praying therein that he may be discharged from the offence registered as L.A.C. No. 1773/2002 of Mulund police station under the provisions of Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "SC ST Act"

for the sake of brevity) and Section 7 (1) (d) of the Protection of Civil Rights Act 1955 (hereinafter referred to as the "PCR" Act for the sake of brevity).

2. A complaint has been filed against the petitioner and one Smt. Chellappa and Smt. Mathuram to the Sr. Inspector of Police, Mulund (W) police station. All are them are working as teachers in the same school as the complainant. In the said complaint some acts were alleged against the petitioner and others and due to some of these acts, it is the case of the complainant that the petitioner and other two accused had committed an offence under SC ST Act and the PCR Act. These incidents are reflected in para 1 to 4 of the complaint. The said paras are as under:-

> I. That Mr. Charles Raj and 2) Mrs. Gnanam Chellappa are working as a trained teacher and Deputy Head teacher respectively and Mrs. Mathuram is also working as a Head teacher in the aforesaid school. They are working in the aforesaid School alongwith me. That on 28.9.02 at around 7.25 a.m. Mr. Charles Raj abused me with filthy languages in the office and attempted to assault me with chair

without any reason. Therefore, I made a N.C. being No.161/02 on 10.10.02 with the Vijaya Nagar Police Chowki Mulund West under Section 504 and 506 of I.P.C. Further, he threatened me with dire consequences. Therefore I made a complaint to Municipal Commissioner and also various authorities of the Educational Department of Municipal Corporation of Greater Mumbai about the illegal and alleged act of Mr. Charles Raj.

II. Further, in order to take revenge upon me once again on 30.11.02 on the last working day of the month at around 8.30 a.m. during the working hours, while closing monthly attendance and other particulars Mr. Charles Raj along with Mrs. Gnanam Chellappa and Mrs. Mathuram entered into my Class room and they abused me with filthy languages. Further they intentionally insulted me by calling me by my caste i.e. "Hai Pallan what can you do?" and attempted to assault me. In order to save my life I was trying to came out. However, the said Charles Raj shouted and abused me by uttering the same words within the public view. Further Mr. Charles Raj told me as "Hai Pallan what you have done by making Complaint against me to the School

Authorities". You can not do any thing as long as Mrs. Melba Trinidad my sister-in-law is holding the post of beat Inspector.

III. That on 3.12.2002 at around 8.12 a.m. when I was in the toilet Mr. Charles Raj has put up the latch and I was wrongfully confined by the illegal act of Mr. Charles Raj. Therefore, I shouted and asked somebody rushed to the toilet and opened the door. It is to be noted when I was entering into the toilet Mr. Charles Raj was standing thereby and he had done the illegal act.

IV. Further on 4.12.2002, in the morning Mr. Charles or at his instances, somebody smear the Gum on my chair in order to make me stick on the chair. This is also the handiwork of Mr. Charles. On the same day after the school hours at around 1.30 p.m. Mr. Charles Raj once again abused me in the same fashion as aforesaid by mentioning my caste.

3. The learned counsel for the petitioner Shri. P.M. Pradhan has submitted that no offence can be said to be made out under the SC ST and PCR Act

because in this case, it is the case of the complainant himself that the Scheduled Caste to which he belongs to i.e. the Hindu Harijan Pallan Community is included in the Scheduled Castes list of the Government of Tamilnadu. This Caste is not included in either Scheduled Castes or Scheduled Tribes list of the Government of Maharashtra. Shri. Pradhan, therefore, contended that this community cannot be termed as Scheduled Caste in Maharashtra and hence, the act of the petitioner cannot be said to be an offence in Maharashtra. There appears to be considerable merit in the submission made by Shri. Pradhan.

4. Under the SC and ST Act under section 2(1)(c), Scheduled Caste and Scheduled Tribes have been defined thus:-

> 2(1)(c) "Scheduled Castes and Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of Article 366 of the Constitution;

. Clause (24) and clause (25) of Article 366 of the Constitution of India read thus:-

> (24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;
>
> (25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;

. In the present case, it is the case of the complainant that he belongs to a Scheduled Caste and hence, it would be necessary only to refer to clause 24 of Article 366 of the Constitution. Looking to Clause 24 which is reproduced above, it would be necessary to refer to Article 341 of the Constitution of India. Article 341 reads thus:-

341. Scheduled Castes.- (1) The President [may with respect to any State [or Union territory], and where it is a State [***], after consultation with the Governor [***], thereof], by public notifications, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes <u>in relation to that State</u> [or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

(Emphasis supplied by Court)

5. On a plain reading of Article 341 of the Constitution, it is quite clear that a caste, would be deemed to be a Scheduled caste only in relation to that State as notified in the list. It is quite clear that the Caste Harijan Pallan community is not recognised as Scheduled Caste in the State of Maharashtra, but it is only recognised as Scheduled Caste in the State of Tamilnadu. Looking to the definition of Scheduled Caste in the SC ST Act and the relevant provisions of Article 341 and 366 of the Constitution of India, in my opinion, no offence can be said to be made out under the SC ST Act. Looking to all the facts and the legal position, the act of the petitioner which has been committed in the State of Maharashtra cannot be said to be an offence under the SC ST Act.

6. The position of Scheduled Caste under the PCR Act is identical to that under SC ST Act. Section 2(bd) of the PCR Act defines Scheduled Castes. The said definition is as under:-

> 2(bd). "Scheduled Castes" has the meaning assigned to it in clause (24) of Article 366 of the Constitution;]

. Thus, it is seen that the position under the PCR Act and SC ST Act is similar in respect of Scheduled Castes. I have already observed above, that the act of the petitioner committed in in the State of Maharashtra, cannot be said to be an offence under the SC ST Act. The same reasoning would apply in the case of the PCR Act. In such case, the petitioner is entitled to be discharged in the case of the offence under the SC ST Act as well as the PCR Act. In the present case, looking to the legal position there is no material at all to proceed against the petitioner under the provisions of these two Acts.

7. On reading of the complaint, few minor offences under IPC, prima facie, appear to be made out against the petitioner. The said offences are triable only by the Magistrate. It appears that all these cases are pending before the Special Court, hence, the proceeding in Special Case (SC ST) No. 3/2003 be transferred by the Special Court to the Court of the concerned Magistrate.

8. Looking to the fact that the petitioner has been suspended since a long time, the learned Magistrate to dispose of the trial as expeditiously as possible.

9. Rule is made absolute in terms of prayer clause 17(b).